UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION	Lead Case No. 4:14-cv-3428 **CLASS ACTION**

ANSWER OF THE GOLDMAN SACHS GROUP, INC., RIVERSTONE HOLDINGS LLC, FRC FOUNDERS CORPORATION, AND ACM LTD. TO THE SECOND CONSOLIDATED AMENDED COMPLAINT

The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation, and ACM Ltd. (f/k/a KERN Partners Ltd.), (collectively, the "Sponsor Defendants"), by their attorneys, hereby answer the Second Consolidated Amended Class Action Complaint (the "Second Amended CAC").[1]

The allegations in Plaintiffs' Second Amended CAC are identical to the allegations in Plaintiffs' Consolidated Amended Class Action Complaint (ECF No. 72), with the exception of newly-added Count III for alleged violations of Section 20A of the Exchange Act by the Sponsor Defendants. Accordingly, the Sponsor Defendants hereby incorporate by reference their Answer to Plaintiffs' Consolidated Amended Class Action

[1] The Second Amended CAC erroneously names as a defendant "First Reserve Corporation," which was the previous name of the advisor to certain affiliated funds that made an investment in Cobalt common stock. "First Reserve Corporation" changed its name to "FRC Founders Corporation" before the period relevant to this action. Accordingly, to the extent that the Second Amended CAC's allegations refer to "First Reserve Corporation," FRC Founders Corporation hereby responds and answers that such references are erroneous and further states that any response to such allegations is made only by and on behalf of FRC Founders Corporation. In addition, pursuant to Notice of Change of Firm name (ECF No. 116), KERN Partners Ltd. has changed its name to ACM Ltd. Accordingly, to the extent that the Second Amended CAC's allegations refer to "KERN Partners Ltd.," any response to such allegations is made only by and on behalf of ACM Ltd.

Complaint (ECF No. 127) ("Original Answer"), including all responses and defenses contained therein. The Sponsor Defendants respond to the numbered paragraphs in Count III of the Second Amended CAC with the correspondingly numbered paragraphs below.

In collectively responding to the allegations of the Second Amended CAC, the Sponsor Defendants: (i) incorporate into each such response a denial of all allegations in the Second Amended CAC (including those outside of the knowledge or information of the Sponsor Defendants) to the extent that they assert or suggest that the Offering Documents[2] or the other public disclosures of Cobalt International Energy, Inc. ("Cobalt") were false or misleading in any respect, to the extent they suggest that the Sponsor Defendants possessed any material non-public information at the time of any stock sales, to the extent they suggest that the Sponsor Defendants acted jointly with respect to their respective minority investments in Cobalt common stock, to the extent they suggest that the Sponsor Defendants acted to control Cobalt, and to the extent they assert any factual allegations that are inconsistent with or contrary to the Offering Documents, to which the Sponsor Defendants refer for a complete and accurate statement of their contents; (ii) deny any averments in the headings and subheadings of the Second Amended CAC; and (iii) in all events intend to respond only as to allegations directed at each of them individually, and state that none of them should be deemed to be responding to allegations that are directed solely to other defendants (including other Sponsor

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[2] The "Offering Documents" are defined to include (i) the Registration Statement filed on January 4, 2011, (ii) the Registration Statement filed on December 30, 2013, (iii) the February 2012 Offering Materials, (iv) the December 2012 Offering Materials, (v) the January 2013 Offering Materials, (vi) the May 2013 Offering Materials, and (vii) the May 2014 Offering Materials, as those terms are defined in the Second Amended CAC, and any prior versions or subsequent amendments thereof (including materials incorporated by reference).

Defendants). The Sponsor Defendants provide their Answers in a joint format for convenience only; neither this document nor its substance acts as an admission or concession that the Sponsor Defendants acted jointly with respect to their separate respective minority investments in Cobalt.

IX. CLAIMS FOR RELIEF

COUNT III

For Violations Of Section 20A Of The Exchange Act And Rule 10b-5 Against The Controlling Entity Defendants

> 282. Plaintiffs repeat and reallege each and every allegation contained above (other than disclaimers of fraud claims) as if fully set forth herein. As set forth in the paragraphs above, and as further set forth below, the Controlling Entity Defendants each committed underlying violations of Section 10(b) and Rule 10b-5 thereunder by selling Cobalt common stock while in possession of material nonpublic information about the Company's Angolan operations, and, consequently, are liable to contemporaneous purchasers of that stock under Section 20A of the Exchange Act. See 15 U.S.C § 78t-1(a).

282. To the extent the allegations contained in Paragraph 282 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 282, except refer the Court to the Sponsor Defendants' Original Answer, including all responses and defenses set forth therein, which the Sponsor Defendants incorporate by reference herein.

> 283. Each of the Controlling Entity Defendants, through their designees to Cobalt's Board of Directors and through direct communications from Cobalt and the Executive Defendants (together, the "Cobalt Defendants"), possessed material nonpublic information at the times they sold shares in the: (i) February 2012 Common Stock Offering; (ii) January 2013 Common Stock Offering; and (iii) May 2013 Common Stock Offering (the "Common Stock Offerings"). Moreover, Controlling Entity Defendant Goldman Sachs Group, Inc. ("Goldman Sachs Group") sold shares in the secondary market throughout 2014. In total, the Controlling Entity Defendants collectively sold 130,709,730 shares in the Common Stock Offerings for ***$3.470 billion***, and Goldman Sachs Group sold an additional

> 30,925,522 shares in 2014 for another $544.5 million. Each of the Controlling Entity Defendants' profits far exceeded each Controlling Entity Defendant's capital contribution to create Cobalt. Indeed, internally, Goldman Sachs Group estimated that, by liquidating its Cobalt common stock holdings during this period, it made more than 4.2x its initial investment in Cobalt.

283. To the extent the allegations contained in Paragraph 283 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 283, except refer to Forms 4 filed with the SEC and trade records for the details of the respective stock sales of funds affiliated with the Sponsor Defendants.

> 284. Material nonpublic information known to the Controlling Entity Defendants at the times of their Cobalt common stock sales included among other things that:
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> - At the time of the February 2012 Common Stock Offering, the Controlling Entity Defendants knew, among other things, that Sonangol awarded Blocks 9 and 21 to Cobalt outside the normal bid process in Angola, the assignment of the Angolan partners including Nazaki was a condition of Cobalt's being awarded Block 9 and 21, Nazaki was 99.96% owned by Vicente, Kopelipa, and Dino (all Angolan government officials), and Cobalt had significant resultant exposure to investigation and prosecution by U.S. and Angolan authorities, including under the FCPA and money laundering statutes, all contrary to the Cobalt Defendants' public statements; and
> - In addition to the above nonpublic information concerning Nazaki's ownership and Cobalt's attendant exposure to regulatory and criminal actions, at the time of the January 2013 and May 2013 Common Stock Offerings, and throughout the period of Goldman Sachs Group's 2014 secondary market sales, the Controlling Entity Defendants also knew that Cobalt's Loengo well had limited commercial viability, leading to the Cobalt Defendants discussing an exit strategy to recover sunk costs from Block 9 (*Loengo was Cobalt's only prospect in Block 9*), which conflicted with the Cobalt Defendants' prior and ongoing public statements about the Loengo well.

284. To the extent the allegations contained in Paragraph 284 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 284.

> 285. Simply put, the Controlling Entity Defendants created and controlled Cobalt, possessed nonpublic knowledge about Cobalt's operations in Angola that they knew or recklessly disregarded would cause the Company's share price to fall when publicly disclosed, and used the Common Stock Offerings and secondary market sales to unload significant portions of their holdings at inflated prices before the nonpublic information was revealed. In fact, by selling into the $10-plus per share price increase that occurred prior to the Common Stock Offerings in 2012 and 2013, the Controlling Entity Defendants were able to sell at prices from $25.15 to $28.00 per share, as opposed to the $10.07 per share closing price on November 5, 2014, following the final corrective disclosures related to the chain of material nonpublic information at issue here (i.e., Cobalt's admission that Loengo was a "dry hole").

285. To the extent the allegations contained in Paragraph 285 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 285.

> 286. Due to the Controlling Entity Defendants' conduct in selling shares while in possession of material nonpublic information, which is a violation of Section 10(b) and Rule 10b-5 thereunder, the Controlling Entity Defendants are liable under Section 20A of the Exchange Act to all Class members who purchased Cobalt's common stock at inflated prices contemporaneously with sales by the Controlling Entity Defendants, including:
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> (i) Plaintiff Universal, which purchased contemporaneously with the February 2012 Common Stock Offering;
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> (ii) Lead Plaintiff GAMCO Global Gold, Natural Resources & Income Trust ("GAMCO Global"), which purchased contemporaneously with the January 2013 Common Stock Offering;
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> (iii) Lead Plaintiffs GAMCO Global and GAMCO Natural Resources, Gold & Income Trust ("GAMCO Natural"), and Plaintiff AP7, each of which purchased contemporaneously with the May 2013 Common Stock Offering; and
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> (iv) Plaintiff Universal, which purchased contemporaneously with at least one Goldman Sachs Group sale in 2014.
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> Moreover, upon information and belief based on, among other things, the fact the Controlling Entity Defendants sold more than 161 million shares during the Class

Period to the investing public, thousands of other Class Members also purchased shares contemporaneously with the Controlling Entity Defendants' Class Period sales.

286. To the extent the allegations contained in Paragraph 286 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 286, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning details of transactions by Class members.

A. The Controlling Entity Defendants Designated Cobalt Board Members and Received Material Nonpublic Information from their Designees

287. In connection with Cobalt's December 2009 IPO, Cobalt and the Controlling Entity Defendants (or their affiliated entities) entered into a Stockholders Agreement that, among other things, entitled the Controlling Entity Defendants to designate and maintain a majority of Cobalt's Board of Directors, including two by Goldman Sachs entities, two by Carlyle/Riverstone, two by First Reserve (n/k/a FRC Founders Corporation), and one by KERN (n/k/a ACM Ltd.).[3] Pursuant to their rights under the Stockholders Agreement, the Controlling Entity Defendants each designated at least one Cobalt Board member from prior to the beginning of the Class Period until after the May 2013 Common Stock Offering. Specifically,

(i) Defendants Lebovitz and Pontarelli were Managing Directors of Defendant Goldman Sachs Group and its designees to the Cobalt Board from before the Class Period until their resignations on May 28, 2013 and January 28, 2014, respectively;

(ii) Defendants Lancaster and Coneway were Managing Directors of Defendant Riverstone and its designees to the Cobalt Board from before the Class Period until their resignations on May 8, 2013 and January 28, 2014, respectively;

(iii) Defendants France and Moore were Managing Directors of Defendant First Reserve (n/k/a FRC Founders Corporation) and its designees to the Cobalt Board from before the Class Period until May 28, 2013 and through the end of the Class Period, respectively; and

(iv) Defendant van Steenbergen was the Co-Founder and Managing Partner of Defendant KERN (n/k/a ACM Ltd.) and its designee to the Cobalt Board during the entire Class Period.

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[3] *See* Cobalt 2011 Form 10-K at Ex. 9.1, § 3.1(a).

In addition, prior to the Class Period, the Controlling Entity Defendants' Board designees included Defendant Henry Cornell (Goldman Sachs Group's Vice-Chairman, and Managing Director in its Merchant Banking Division), Defendant J. Hardy Murchison (a Managing Director at First Reserve), and Gregory Beard (a founder and Managing Director at Riverstone).

287. The Sponsor Defendants deny the allegations contained in Paragraph 287, except admit and aver on information and belief that the relevant funds and/or their managers designated individuals to serve on Cobalt's Board of Directors from time to time, and refer the Court to (i) the Offering Documents and Cobalt's public disclosures for accurate statements of Cobalt's board composition at all relevant times, and (ii) the Stockholders Agreement for an accurate statement of its content.

288. Through these designees (and through direct communications with the Company), the Controlling Entity Defendants were entitled to and did receive material nonpublic information,[4] and, as discussed below, possessed such material nonpublic information at the times they reaped billions of dollars in proceeds from selling their Cobalt shares at artificially inflated prices to Plaintiffs and other unsuspecting Class members.

288. To the extent the allegations contained in Paragraph 288 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 288, except refer the Court to the Stockholders Agreement for an accurate statement of its content.

B. The Controlling Entity Defendants Sold Cobalt Common Stock While in Possession of Material Nonpublic Information

1. The Controlling Entity Defendants Possessed Material Nonpublic Information About Angolan Officials' Ownership of Nazaki and Its Potential Consequences for Cobalt at the Time of the February 2012 Common Stock Offering

[4] The Stockholders Agreement expressly provided that "the Directors designated by the [Controlling Entity Defendants] may share confidential, nonpublic information about the Company with the [Controlling Entity Defendants] and their respective affiliates." (*Id.* at § 3.3(a)).

289. Prior to the February 2012 Common Stock Offering (and beyond), the Controlling Entity Defendants knew, among other things, that: (i) Sonangol awarded Cobalt the contracts for Blocks 9 and 21 outside the normal Angolan bid process; (ii) the involvement of Nazaki as a partner in Blocks 9 and 21 was a condition to Cobalt receiving the contracts for Blocks 9 and 21; (iii) Nazaki would share in the profits from any oil produced in Blocks 9 and 21; (iv) Nazaki was 99.96% owned by Messrs. Vicente, Kopelipa, and Dino, through their 100% ownership of Grupo Aquattro; and (v) as a result of these and other facts, Cobalt had substantial exposure to U.S. and Angolan criminal and regulatory actions, including under the FCPA and money laundering statutes.

289. The Sponsor Defendants deny the allegations contained in Paragraph 289.

290. The Controlling Entity Defendants learned these facts through: (i) Board meetings beginning prior to Cobalt's December 2009 IPO; (ii) direct communications with the Cobalt Defendants, including emails and telephonic meetings; (iii) presentations and reports from Cobalt's law firms and consultants, including those Cobalt retained to investigate Cobalt's Angolan partners; and (iv) reports from well-known international investigative firms, including Navigant Consulting ("Navigant"), retained by Cobalt and its lawyers to investigate Cobalt's Angolan partners.

290. The Sponsor Defendants deny the allegations contained in Paragraph 290.

291. For example, in November 2010, the Controlling Entity Defendants were told that Navigant had found and reported that Nazaki was owned by Angolan government officials. Specifically, Navigant concluded that Kopelipa, Vicente, and Dino were each 33.3% owners of Grupo Aquattro, the company that owned 99.96% of Nazaki, as explained above, and that Kopelipa was the Minister of Military Affairs in the Office of the President, Vicente was the Chairman and CEO of state-owned Sonangol, and Dino was the Head of Communications in the Presidency. Navigant's findings were later confirmed by Vicente himself.

291. The Sponsor Defendants deny the allegations contained in Paragraph 291, except refer the Court to the November 17, 2010 Legal Memorandum prepared by Vinson & Elkins, LLP and O'Melveny & Myers, LLP for an accurate statement of its content, and deny knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 291.

> 292. Notably, during this period, the Controlling Entity Defendants also knew, and were told by Cobalt's counsel during Board meetings in 2010, that – if Navigant was correct that Nazaki was owned by Angolan government officials – it was likely that the SEC and DOJ would (and ultimately did) investigate Cobalt and that there was potential that the SEC and DOJ could conclude that Cobalt was illegally providing something of value to Nazaki through the Angolan partnership. Moreover, the Controlling Entity Defendants knew that, apart from Cobalt's exposure to the FCPA, money laundering and other criminal liability under U.S. law, ownership of Nazaki by Angolan governmental officials could (and ultimately did) expose Cobalt to Angolan criminal liability.

292. The Sponsor Defendants deny the allegations contained in Paragraph 292, except refer the Court to the November 17, 2010 Legal Memorandum prepared by Vinson & Elkins, LLP and O'Melveny & Myers, LLP for an accurate statement of its content.

> 293. The Cobalt Defendants did not reach out to the SEC on these matters or disclose these material nonpublic facts to investors. Nor did the Controlling Entity Defendants, as they should have, direct the Cobalt Defendants to do so. In particular, recognizing the importance of the material nonpublic information contained in the Navigant Report and elsewhere, Cobalt and the Controlling Entity Defendants never disclosed the information contained in the Navigant Report to the SEC at ***any time*** during its multi-year investigation of Cobalt's relationship with its Angolan partners. Indeed, the contents of the Navigant Report were not disclosed to Plaintiffs until over 18 months ***after*** this litigation began. Moreover, as discussed below, when the Financial Times published an article in April 2012 reporting on Nazaki's ownership by Angolan government officials, the Cobalt Defendants made vigorous countervailing statements claiming that the reporting was "demonstrably false."

293. To the extent that the allegations contained in Paragraph 293 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 293, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the April 2012 Financial Times

article for an accurate statement of its content, (iii) Cobalt's April 16, 2012 press release for an accurate statement of its content, and (iv) the Cobalt Defendants'[5] Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations, and deny knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 293.

> 294. On March 1, 2011, Cobalt filed its Form 10-K for the year ending December 31, 2010 (which commenced the Class Period), disclosing only that it was "aware of allegations . . . of a connection between senior Angolan government officials and Nazaki." In response to the Form 10-K, on March 9, 2011, the SEC contacted Cobalt by telephone informally requesting information "seeking to understand the nature of Cobalt's relationships with the members of the contractor group for Blocks 9 and 21 offshore Angola as disclosed in the Annual Report."

294. To the extent that the allegations contained in Paragraph 294 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 294 to the extent they suggest that Cobalt's public disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at the time of any stock sales, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 295. Cobalt's Form 8-K disclosure following notice of an "informal" SEC inquiry in March of 2011 stands in stark contrast to its failure to file a Form 8-K or otherwise advise investors when Cobalt learned eight months later on November 11, 2011, that the SEC's "informal inquiry" had become a "formal order of inves-

[5] When used in the Sponsor Defendants' Answers to the allegations in the Second Amended CAC, the term "Cobalt Defendants" shall have the meaning set forth in the Cobalt Defendants' Answer to Plaintiffs' Second Consolidated Amended Class Action Complaint (ECF No. 208).

tigation" of the Company's relationship with Nazaki and Nazaki's ownership by Angolan government officials.

295. To the extent that the allegations contained in Paragraph 295 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 295 to the extent they suggest that Cobalt's public disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at the time of any stock sales, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

296. Instead of causing Cobalt to disclose to investors the formal investigation, complete, accurate, and truthful facts about Nazaki, and Cobalt's irregular receipt of Blocks 9 and 21 outside the Angolan bid process, the Controlling Entity Defendants collectively determined to permit the Cobalt Defendants to publicly maintain the fiction that the partnership with Nazaki did not expose the Company to criminal and regulatory action. This was all done while Cobalt issued positive announcements that caused a run up of approximately $20 in Cobalt's per share price and enabled the Controlling Entity Defendants to unload over $1.13 billion of their Cobalt common stock holdings at inflated prices.

296. The Sponsor Defendants deny the allegations contained in Paragraph 296.

297. For example, on January 5, 2012, approximately six weeks before the February 2012 Common Stock Offering – and almost 2 months after commencement of the still undisclosed SEC formal investigation – Defendant Lancaster sent an internal email at Riverstone stating that "we'll need to start reviewing our shareholder agreement at Cobalt as I hope to gently steer the group to taking some liquidity if we're able to put out an additional [sic] positive release sometime soon." Likewise, in an internal email on January 11, 2012, Defendant Lancaster stated "I agree we should de-risk our position." In an internal Goldman Sachs Group email, Henry Cornell, who had been a Board member until April 2011, said ***"let's distribute it all and call it a day."***

297. The Sponsor Defendants deny the allegations contained in Paragraph 297, except refer the Court to the documents referenced in Paragraph 297 for an accurate statement of their contents.

> 298. On January 6, 2012, the Angolan anti-corruption activist de Morais filed a complaint with the Angolan Attorney General against, among others, the "Directors and Representatives" of Cobalt and Defendant Bryant alleging that Messrs. Vicente, Kopelipa and Dino owned 99% of Nazaki and accusing Cobalt of colluding with the trio to violate Angolan anticorruption laws. The Angolan complaint confirmed what the Board knew prior to the beginning of the Class Period, that Cobalt had exposure to Angolan criminal actions as a result of its activities with respect to Blocks 9 and 21. Cobalt did not publicly disclose the Angolan criminal complaint.

298. To the extent that the allegations contained in Paragraph 298 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 298, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations, and (iii) the complaint referenced in Paragraph 298 for an accurate statement of its content.

> 299. Avoiding disclosure of adverse information about Cobalt's Angolan operations in advance of the February 2012 Common Stock Offering was openly discussed between the Company and Controlling Entity Defendants. On February 21, 2012, prompted by an inquiry made to both Riverstone and to Lynne Hackedorn (Cobalt's Vice President for Government and Corporate Affairs), by Tom Burgis at the Financial Times concerning Nazaki, new Cobalt General Counsel Jeffrey Starzec (who replaced Samuel Gillespie on January 1, 2012) sent an email agreeing with Riverstone's refusal to comment on Nazaki given the upcoming offering:
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> > I agree with the no comment stance. Given that we have historically not commented on open matters and that we are in the middle of an offering,

> the company plans to continue not to comment. . . . I spoke with [Hackedorn] and she has received a call from the [Financial Times] – and had no comment.

299. To the extent that the allegations contained in Paragraph 299 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 299, except refer the Court to (i) the February 21, 2012 email exchange referenced in Paragraph 299 for an accurate statement of its content, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 300. In fact, the Cobalt Defendants' and Controlling Entity Defendants' desire to minimize adverse information in advance of the offering extended to Cobalt's Form 10-K for 2011 issued on the same day as the offering. In the 2011 Form 10-K, the Company belatedly made only a passing-single-sentence reference to the formal SEC investigation buried in the "Risk Factors" section on page 50 of the 264-page document ("in November 2011, a formal order of investigation was issued by the SEC related to our operations in Angola."). It was not discussed in the "Legal Proceedings" section of the Form 10-K, or in the "Business" section despite inclusion in that section of far more mundane details concerning Cobalt's Angolan operations. And nowhere did Cobalt discuss or explain the more than four-month delay in disclosing the formal investigation, why there was only a buried passing reference, or why Cobalt failed to file an 8-K, though these issues were discussed internally between and among the Defendants and Cobalt's counsel.[6]

300. To the extent that the allegations contained in Paragraph 300 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 300, except refer the Court to (i) the Offering Documents and Cobalt's other public dis-

[6] For example, according to an internal UBS email (UBS was an underwriter for the February 2012 offering) dated February 17, 2012, in a call with UBS, among others, a few days before the February 2012 Common Stock Offering, the Company revealed the existence of formal investigation and that the "10-k will disclose the topic . . . because company didn't want to file an 8-k."

closures for an accurate statement of their contents, (ii) the email referenced in footnote 6 for an accurate statement of its content, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 301. Indeed, although the Financial Times did notice and publish an article about the formal investigation, Cobalt's attempt to bury the announcement was noted by industry insiders. For example, in an email to a director at Citigroup Global Markets (an Underwriter for the February 2012 Common Stock Offering), a former Director in Citigroup's global energy investment banking group who had become director of business development at a Brazilian E&P company noted that "it was [v]ery slippery of their lawyers burying that in a risk factor in the 10-K," and described it as "[f]inding a shank in a haystack ...." The Citigroup Director responded that he "didn't hear much from buyside regarding the FCPA disclosure. You might be right – people may not have seen it."

301. To the extent that the allegations contained in Paragraph 301 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 301, except deny the allegations contained in Paragraph 301 to the extent they suggest that Cobalt's public disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at the time of any stock sales, and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the documents referenced in Paragraph 301 for an accurate statement of their contents, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 302. The same day that Cobalt issued its Form 10-K, the Company announced the February 2012 Common Stock Offering and issued a prospectus supplement. Tellingly, while the February 21, 2012 (and subsequent February 23, 2012) prospectus supplement incorporated by reference the Form 10-K (and prior

SEC filings), it did not provide any update addressing the material nonpublic information regarding Nazaki's ownership or the SEC investigation.[7]

302. To the extent that the allegations contained in Paragraph 302 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 302 to the extent they suggest that Cobalt's public disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at the time of any stock sales, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations, and admit and aver on information and belief that on February 21, 2012 Cobalt issued its Form 10-K, announced the February 2012 Common Stock Offering, and issued a prospectus supplement.

303. On February 23, 2012, Cobalt commenced the offering. In the offering, while in possession of the material nonpublic information contrary to Cobalt's public statements concerning the ownership of Nazaki and attendant exposure to regulatory and criminal actions, the Controlling Entity Defendants sold 40,709,730 shares of Cobalt common stock at $28.00 per share for in excess of $1.139 billion:

The Carlyle/Riverstone Funds	11,907,228	$333,402,384
The First Reserve Funds	11,799,154	$330,376,312
The Goldman Sachs Group	11,908,050	$333,425,400
The KERN Fund	5,095,298	$142,668,344
Total	**40,709,730**	**$1,139,872,440**

[7] And neither document revealed that China Sonangol had withdrawn from its partnership with Cobalt and British Petroleum in connection with the Angola Block 20 deal announced in December 2011.

303. To the extent that the allegations contained in Paragraph 303 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 303, except admit and aver on information and belief that Cobalt made a secondary public offering of Cobalt common stock pursuant to a Prospectus Supplement on Form 424(B)(5) dated February 24, 2012, including shares sold by funds affiliated with The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation, ACM Ltd., and The Carlyle Group L.P., and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents and a complete description of the February 2012 Offering, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 304. The Controlling Entity Defendants' timing took full advantage of the fact that during the two months immediately preceding the February 2012 Common Stock Offering, Cobalt's common share price had run up from $9.11 per share at the close of trading on November 23, 2011 to $29.09 per share at the close on February 23, 2012.

304. The Sponsor Defendants deny the allegations contained in Paragraph 304, except refer the Court to the publicly reported market prices of Cobalt stock on the dates referenced in Paragraph 304.

> 305. Contemporaneously with the Controlling Entity Defendants' sales, on February 24, 2012, Plaintiff Universal purchased 9,500 shares of Cobalt common stock at the $28.00 offering price. (*See* ECF No. 74-1 pp. 5, 7.) Upon information and belief, thousands of other Class members also purchased shares contemporaneously with the Controlling Entity Defendants' February 23, 2012 sales. As alleged in this Complaint, at the time of the Controlling Entity Defendants' sales and the purchases by Plaintiff Universal and the other Class members, the

price of Cobalt's common stock was artificially inflated by the Cobalt Defendants' material misstatements and omissions.

305. To the extent the allegations contained in Paragraph 305 state a legal conclusion, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 305, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning details of transactions by Class members and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

2. The Controlling Entity Defendants Possessed Material NonPublic Information About Nazaki and the Loengo Well at the Time of the January 2013 and May 2013 Common Stock Offerings

a) Nazaki

306. On April 15, 2012, the *Financial Times* published two articles indicating that Messrs. Vicente, Kopelipa, and Dino each held ownership interests in Nazaki through their shares in Grupo Aquattro. Cobalt vigorously denied the statements in the *Financial Times* article by issuing a press release the following day which "strongly refuted any allegations of wrong doing." In the press release, Cobalt further stated that the *Financial Times* report contained "egregious, demonstrably false allegations" and that Cobalt "once again stood behind its principles of full compliance with all laws in all jurisdictions in which it operates."

306. To the extent that the allegations contained in Paragraph 306 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 306 to the extent they suggest that Cobalt's public disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at

the time of any stock sales, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the documents referenced in Paragraph 306 for an accurate statement of their contents, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 307. Cobalt and its counsel at V&E continued to deny the allegations in the *Financial Times* article throughout May 2012. For example, during a meeting on May 3, 2012, Cobalt's counsel at V&E, Michael Goldberg, told *Financial Times* journalist Tom Burgis that "the due diligence investigation never picked up an indication, was never told by anyone, that Vicente, Kopelipa and Dino had interests in Aquattro." This statement, of course, was inconsistent with what was communicated to V&E, OM&M, Cobalt, and the Controlling Entity Defendants and later confirmed by Vicente. Navigant's conclusions about ownership of Nazaki by Angolan government officials confirmed early reports by Cobalt's other investigative firm Control Risks, which had ***also*** originally reported in early 2010 that three "sources have indicated that there may be a connection between Nazaki and General Kolipa [sic], who serves in several official positions. At least one source has suggested that Dino Nasimento [sic] recently acquired Nazaki shares [that] may be held for the General."

307. To the extent that the allegations contained in Paragraph 307 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 307, except deny knowledge or information sufficient to form a belief as to statements made by Cobalt's counsel to Tom Burgis and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the documents referenced in Paragraph 307 for an accurate statement of their contents, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

b) Loengo

308. In addition to possessing nonpublic knowledge about Nazaki and permitting vigorous public denials by Cobalt regarding the substance of that knowledge leading up to the January 2013 and May 2013 Common Stock Offerings, the Controlling Entity Defendants also received material nonpublic information no later than October 2012 that Block 9 (in which the Loengo well was Cobalt's only prospect) had questionable commercial viability and Cobalt was discussing exit strategies for the block to recover sunk costs, undisclosed facts that belied Cobalt's public statements about the Loengo well.

308. The Sponsor Defendants deny the allegations contained in Paragraph 308.

309. On September 26, 2012, the Operating Committee for Block 9 held a meeting in Miami, Florida, attended by Mike Drennon, Cobalt's General Manager for Angola, among others. The meeting opened with a discussion on the "status of prospect maturation on the large Loengo structure," and, more specifically, how the Loengo structure (Cobalt's only prospect in Block 9) was of questionable commercial viability:

> Currently, the Loengo prospect carries a lot of risk. Preliminary evaluation indicates a thin reservoir that may only have reservoir quality on the flanks of the structure due to the type of deposition. As a result, Loengo has ***questionable commerciality*** with this current interpretation.

(Emphasis added). The minutes of the meeting further reveal the committee discussed that "further maturation of Loengo to get it to drill ready" would require Cobalt to take drastic steps, including: (i) to execute a potential "well trade" with another E&P company drilling in the area (i.e., the well was such a poor prospect they would seek to trade it); (ii) to "incorporate [the other well's] results into Loengo analysis" (to skew its potential); and/or (iii) "hazard work, geologic and economic justification" (to provide justification for drilling).

309. To the extent that the allegations contained in Paragraph 309 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 309, except deny the allegations contained in Paragraph 309 to the extent they suggest that Cobalt's public

disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at the time of any stock sales, and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the document referenced in paragraph 309 for an accurate statement of its content, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 310. Less than a month later, at its October 25, 2012 meeting, the Board was informed about the Loengo well's questionable commercial viability. At that meeting, Mr. Drennon, who rarely attended Board meetings, told the Board that Loengo and Block 9 had low relative potential and that Cobalt should develop an exit plan to recover sunk costs. These were damning conclusions about the Loengo well, which was Cobalt's only prospect in Block 9.

310. To the extent that the allegations contained in Paragraph 310 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 310, except refer the Court to the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 311. Put another way, no later than October 2012, the Board was aware (including the Controlling Entity Defendants' designees) of the need for a strategy to exit Block 9 and to recover sunk costs as much as possible. Notably, Cobalt's desire for an exit strategy is consistent with the account of Cobalt's former CIO, who (as discussed in ¶116) acknowledged that there was "not even a question" that Loengo was not a good prospect, "not even a remote chance" of success on the Loengo well, and expressed his belief that Cobalt was "forced" to take Block 9 and drill Loengo to satisfy Angola's state-owned Sonangol.

311. To the extent that the allegations contained in Paragraph 311 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph

311, except deny knowledge or information sufficient to form a belief as to whether the statements described in Paragraph 311 were in fact made by Cobalt's former CIO and refer the Court to (i) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations, and (ii) the Sponsor Defendants' Original Answer, including all responses and defenses set forth therein with respect to Paragraph 116, which the Sponsor Defendants incorporate by reference herein.

> 312. Moreover, minutes of a September 2013 meeting of the Block 9 Operating Committee support the former CIO's assertion that Cobalt was interested in Block 9 and Loengo only insofar as it gave them access to Blocks 20 and 21. During the meeting, which was attended by representatives of Sonangol and Cobalt, including Antonio Vieira, Deputy General Manager of Cobalt Angola, the Vice Chairman of the Operations Committee from Sonangol acknowledged the arrangement for the blocks was a package deal and complained about Cobalt's delay in drilling Block 9/Loengo: "The Block was granted for the drilling of 3 blocks, ***but it has become apparent that Cobalt is not in fact interested in this Block.*** It is only interested in Blocks 20 and 21 where there are greater prospects, giving the impression that 9/09 is the "***red-headed stepchild.***"

312. To the extent that the allegations contained in Paragraph 312 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 312, except deny the allegations contained in Paragraph 312 to the extent they suggest that Cobalt's public disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at the time of any stock sales, and refer the Court to (i) the document referenced in Paragraph 312 for an accurate statement of its content, (ii) the Offering Documents and Cobalt's other public disclosures for an accurate state-

ment of their contents, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 313. Significantly, upon learning that the Loengo well had limited commercial viability and Cobalt was discussing an exit strategy from Block 9 (along with its nonpublic knowledge concerning Nazaki), the Board did not, as it should have, direct the Company to disclose the truth about the Loengo well. Instead, the Controlling Entity Defendants again focused on unloading a portion of their significant Cobalt common stock holdings. For example, on January 15, 2013, Cobalt issued its prospectus supplement for the January 2013 Common Stock Offering which, remarkably, continued to list Loengo as among Cobalt's "large, oil-focused wells" in spite of the fact that approximately ten weeks earlier the Board received information about Loengo's limited viability and Cobalt's intent to pursue an exit strategy.

313. To the extent that the allegations contained in Paragraph 313 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 313, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations, and admit and aver on information and belief that Cobalt issued a prospectus supplement for the January 2013 Common Stock Offering.

> 314. On January 16, 2013, while in possession of material nonpublic information contrary to Cobalt's public statements concerning the ownership of Nazaki, Cobalt's FCPA exposure, and the commercial viability of the Loengo well, the Controlling Entity Defendants sold 40,000,000 shares of Cobalt common stock at $25.15 per share for $1.0 billion:

The Carlyle/Riverstone Funds	13,049,550	$326,238,750
The First Reserve Funds	10,000,000	$250,000,000
The Goldman Sachs Group	13,050,450	$326,261,250
The KERN Fund	3,900,000	$97,500,000

Total	**40,000,000**	**$1,000,000,000**

314. The Sponsor Defendants deny the allegations contained in Paragraph 314, except admit and aver on information and belief that Cobalt made a secondary public offering of Cobalt common stock pursuant to a Prospectus Supplement on Form 424(B)(4) dated January 17, 2013, including shares sold by funds affiliated with The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation, ACM Ltd., and The Carlyle Group L.P., and refer the Court to the Offering Documents as well as Cobalt's public disclosures for an accurate statement of their contents and a complete description of the January 2013 Offering.

> 315. Contemporaneously with the Controlling Entity Defendants' sales, on January 16, 2013, Lead Plaintiff GAMCO Global purchased 40,000 shares of Cobalt common stock at the $25.15 offering price. (*See* ECF No. 72 p. 121). Upon information and belief, thousands of other Class members also purchased shares contemporaneously with the Controlling Entity Defendants' January 16, 2013 sales. As alleged in this Complaint, at the time of the Controlling Entity Defendants' sales and Lead Plaintiff GAMCO Global's and the other Class members' purchases, the price of Cobalt common stock was inflated by the Cobalt Defendants' material misstatements and omissions.

315. To the extent the allegations contained in Paragraph 315 state a legal conclusion, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 315, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning details of transactions by Class members and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 316. The Controlling Entity Defendants' focus on selling Cobalt common stock at prices inflated by undisclosed facts about the Company continued following the January 2013 Common Stock Offering. For example, on March 15, 2013, Defendants Pontarelli (Goldman Sachs Group), Lancaster (Riverstone), Moore (First Reserve), and France (First Reserve) exchanged emails about the possibility of "selling down" additional shares of Cobalt and inquiring about the "window" for doing so. Defendant Lancaster forwarded the email string to Riverstone founders Pierre Lapeyre and David Leuschen, and Defendant Coneway, stating that "[Goldman Sachs] is eager to sell more if we have a window next week." Leuschen responded with his opinion that Riverstone should sell and Lapeyre responded to "Distribute the stock!!!"

316. The Sponsor Defendants deny the allegations contained in Paragraph 316, except refer the Court to the documents referenced in Paragraph 316 for an accurate statement of their contents.

> 317. Similarly, on March 20, 2013, Defendant Coneway (Riverstone) sent an email to Defendant Lancaster (Riverstone) indicating that Leuschen and Lapeyre were interested in decreasing Riverstone's exposure to Cobalt. Defendant Coneway stated that he would "report on options (or lack thereof) for an immediate secondary [offering]" and that they be "prepared to hit a secondary window in the next few weeks should there be one."

317. The Sponsor Defendants deny the allegations contained in Paragraph 317, except refer the Court to the document referenced in Paragraph 317 for an accurate statement of its content.

> 318. On March 26, 2013, Defendant Coneway sent an email to Defendant Lancaster, Leuschen and Lapeyre concerning a "30-minute conversation with Joe Bryant on a number of subjects, but principally on the topic of projected available windows that might be available for secondaries" (stock offerings).

318. The Sponsor Defendants deny the allegations contained in Paragraph 318, except refer the Court to the document referenced in Paragraph 318 for an accurate statement of its content.

> 319. On May 8, 2013, the Controlling Entity Defendants found their window to unload more stock. On that day, while in possession of material nonpublic information contrary to Cobalt's public statements concerning the ownership of Nazaki and the Loengo well, the Controlling Entity Defendants sold 50,000,000 shares of Cobalt common stock at $26.62 per share for in excess of $1.330 billion:

The Carlyle/Riverstone Funds	15,083,328	$401,518,191
The First Reserve Funds	15,832,304	$421,455,932
The Goldman Sachs Group	15,084,368	$401,545,876
The KERN Fund	4,000,000	$106,480,000
Total	**50,000,000**	**$1,330,999,999**

319. The Sponsor Defendants deny the allegations contained in Paragraph 319, except admit and aver on information and belief that Cobalt made a secondary public offering of Cobalt common stock pursuant to a Prospectus Supplement on Form 424(B)(4) dated May 9, 2013, including shares sold by funds affiliated with The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation, ACM Ltd., and The Carlyle Group L.P., and refer the Court to the Offering Documents as well as Cobalt's public disclosures for an accurate statement of their contents and a complete description of the May 2013 Offering.

> 320. Contemporaneously with the Controlling Entity Defendants' sales, on May 8, 2013, Lead Plaintiff GAMCO Global purchased 400,000 shares of Cobalt common stock (*see* ECF No. 72 p. 121), Lead Plaintiff GAMCO Natural purchased 50,000 shares of Cobalt common stock (*see* ECF No. 72 p. 125), and Plaintiff AP7 purchased 22,910 shares of Cobalt common stock (*see* ECF No. 72 p. 132). Upon information and belief, thousands of other Class members also purchased shares contemporaneously with the Controlling Entity Defendants' May 8, 2013 sales. As alleged in this Complaint, at the time of the Controlling Entity Defendants' sales and purchases by Lead Plaintiff GAMCO Global, Lead Plaintiff GAMCO Natural, Plaintiff AP7, and the other Class members, the price of Cobalt common stock was inflated by the Cobalt Defendants' material misstatements and omissions.

320. To the extent the allegations contained in Paragraph 320 state a legal conclusion, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 320, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning details of transactions by Class members and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 321. In total, while in possession of material nonpublic information contrary to Cobalt's public statements concerning the ownership of Nazaki, Cobalt's attendant FCPA exposure, and/or the Loengo well, each of the Controlling Entity Defendants, except for KERN, sold more than half of their Cobalt common stock for more than $1.0 billion each:

The Carlyle/Riverstone Funds	53.48%	$1,061,159,325
The First Reserve Funds	50.73%	$1,001,832,244
The Goldman Sachs Group	53.48%	$1,061,232,526
The KERN Fund	40.57%	$346,698,344

321. The Sponsor Defendants deny the allegations contained in Paragraph 321, except refer to Forms 4 filed with the SEC reflecting the respective stock sales of funds affiliated with the Sponsor Defendants.

> 322. The sales, and the profits thereon, far exceeded each Controlling Entity Defendant's initial respective investment to create the Company.

322. The Sponsor Defendants deny the allegations contained in Paragraph 322.

C. Goldman Sachs Group Sold 30.9 Million Shares in the Secondary Market in 2014 for $544.5 Million While in Possession of Material Nonpublic Information About Nazaki and the Loengo Well

323. On December 1, 2013, Cobalt issued a press release acknowledging that its Lontra well in Block 21 contained "more gas than [Cobalt's] pre-drill estimates" and that the Company was temporarily abandoning the well. Cobalt did not disclose any of the other material nonpublic information driving the Controlling Entities' stock sales, including that Loengo was not commercially viable and the fact that Vicente himself had confirmed Navigant's conclusion that Nazaki was owned by Angolan officials. The Lontra news caused Cobalt's stock price to tumble 21.2% (or $4.72 per share) from a close of $22.23 per share on November 29, 2013, to close at $17.51 per share on December 3, 2013. No doubt recognizing that the decline would have been even more dramatic if the market had also learned the truth about Nazaki and Loengo, Goldman Sachs Group almost immediately launched a plan to sell the remainder to its Cobalt stock before the truth about Nazaki's ownership and the Loengo well's limited commercial viability became public.

323. To the extent that the allegations contained in Paragraph 323 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 323, except refer the Court to (i) the press release referenced in Paragraph 323 for an accurate statement of its content, (ii) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (iii) the publicly reported market prices of Cobalt stock on the dates referenced in Paragraph 323, and (iv) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

324. In February 2014, Defendants Pontarelli and Lebovitz contacted Defendant Credit Suisse (which was also an Underwriter of the February 2012 Common Stock Offering) on behalf of Goldman Sachs Group to set up a Section 10b5-1 plan in order to sell its remaining Cobalt common stock – a technique widely used by officers and directors of public companies to sell stock according to the

> parameters of the affirmative defense to illegal insider trading.[8] According to internal Credit Suisse emails, Goldman Sachs Group's 10b5-1 plan, which would commence in April 2014, was created to "dribble their shares" into the market.

324. To the extent the allegations contained in Paragraph 324 state a legal conclusion, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 324, except admit and adver (on information and belief as to all Sponsor Defendants except the one at issue in this Paragraph) that Kenneth Pontarelli contacted Credit Suisse in February 2014 on behalf of Goldman Sachs Group to set up a 10b5-1 plan and refer the Court to the documents referenced in Paragraph 324 for an accurate statement of their contents.

> 325. In a January investor presentation that same month, Cobalt touted Loengo as a 200+ million barrel prospect. Likewise, during an investor conference call on February 27, 2014, Defendant Farnsworth touted Loengo as a "quite a large structure, which we think has a 250- to 500 million-barrel potential." Moreover, Farnsworth described Loengo as "in a block that we know there's oil in it." Remarkably, this is the same block – Block 9 – from which Cobalt had discussed developing an exit strategy and Sonangol had complained Cobalt was treating like a "redheaded stepchild."

325. To the extent that the allegations contained in Paragraph 325 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 325 to the extent they suggest that Cobalt's public disclosures were materially false and misleading or that the Sponsor Defendants possessed material non-public information at

[8] Where, as here, Goldman Sachs Group entered into the 10b5-1 plan during the Class Period and while already in possession of material nonpublic information, the fact that it putatively sold shares pursuant to such a plan is irrelevant. *See, e.g.*, *Cent. Laborers' Pension Fund* v. *Integrated Elec. Servs. Inc.*, 497 F.3d 546, 554 (5th Cir. 2007) ("[Plaintiff] convincingly suggests that the attempt to use the 10b5-1 as a non-suspicious explanation is flawed because, *inter alia*, [Defendant] entered into the Plan during the Class Period").

the time of any stock sales, and refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the documents referenced in Paragraph 325 for an accurate statement of their contents, (iii) the conference call transcript referenced in Paragraph 325 for an accurate statement of its content, and (iv) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 326. By the time of Cobalt's Analyst Day Presentation on June 4, 2014, Cobalt was describing Block 9 as a 750 million to 1.3 billion barrel prospect. This statement, like the others, was directly contrary to the Cobalt Defendants' prior conclusions regarding the low commercial viability of Loengo/Block 9 that the Controlling Entity Defendants had known since 2012, and were made without the benefit of a single Loengo test well that would justify the Cobalt Defendants' public statements that Loengo was up to a 1.3 billion barrel prospect so drastically contradicting their initial conclusions about Loengo's low potential. Cobalt's September 2, 2014 investor presentation also described Loengo as "750 – 1,300 MMBO resource potential," again standing in stark contrast to the fact that the Cobalt and Controlling Entity Defendants knew no later than October 2012 that Loengo had limited commercial viability, and, before Cobalt began drilling a test well that internal documents reveal it was drilling only to please Sonangol.

326. To the extent that the allegations contained in Paragraph 326 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 326, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the documents referenced in Paragraph 326 for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

327. Goldman Sachs Group commenced "dribbling their shares" into the market through the 10b5-1 plan on April 29, 2014, when it sold 300,000 shares for $5,423,537. Its sales continued on virtually every trading day up to and including July 25, 2014, by which time Goldman Sachs Group had sold 26,975,023 shares in 2014 for $486,684,822:

Trade Date	Shares	Proceeds	Trade Date	Shares	Proceeds
4/29/2014	300,001	$5,423,538	6/12/2014	300,000	$5,562,507
4/30/2014	300,001	$5,382,709	6/13/2014	340,900	$6,278,966
5/1/2014	300,001	$5,668,663	6/16/2014	300,000	$5,562,507
5/2/2014	300,001	$5,814,251	6/17/2014	300,000	$5,644,615
5/5/2014	300,001	$5,709,253	6/18/2014	300,000	$5,604,716
5/6/2014	300,001	$5,663,893	6/19/2014	300,000	$5,610,686
5/7/2014	300,001	$5,567,145	6/20/2014	280,000	$5,281,271
5/8/2014	300,001	$5,211,172	6/23/2014	300,000	$5,611,076
5/9/2014	300,001	$5,138,843	6/24/2014	300,000	$5,518,438
5/12/2014	300,001	$5,257,971	6/25/2014	200,000	$3,631,660
5/13/2014	300,001	$5,286,081	6/26/2014	250,000	$4,474,526
5/14/2014	300,001	$5,342,359	6/27/2014	469,999	$8,479,534
5/15/2014	300,001	$5,198,572	6/30/2014	300,000	$5,471,189
5/16/2014	300,001	$5,133,563	7/1/2014	300,000	$5,481,839
5/19/2014	300,001	$5,182,462	7/2/2014	300,000	$5,415,330
5/20/2014	300,001	$5,147,423	7/3/2014	230,000	$4,164,012
5/21/2014	300,001	$5,223,412	7/7/2014	300,000	$5,308,292
5/22/2014	300,001	$5,294,960	7/8/2014	370,000	$6,368,077
5/23/2014	300,001	$5,359,789	7/9/2014	300,000	$5,229,484
5/27/2014	300,001	$5,423,928	7/10/2014	300,000	$5,109,127
5/28/2014	300,001	$5,404,518	7/11/2014	250,000	$4,212,407
5/29/2014	300,001	$5,481,617	7/14/2014	300,000	$5,033,798
5/30/2014	300,001	$5,494,967	7/15/2014	300,000	$4,952,440
6/2/2014	300,001	$5,430,018	7/16/2014	300,000	$4,950,430
6/3/2014	300,001	$5,514,136	7/17/2014	75,000	$1,241,710
6/4/2014	300,001	$5,551,246	7/18/2014	149,997	$2,469,151
6/5/2014	75,000	$1,370,662	7/21/2014	225,000	$3,710,460
6/5/2014	9,500,000	$174,466,4	7/22/2014	300,000	$4,970,470
6/9/2014	300,001	$5,515,846	7/23/2014	300,000	$5,009,019
6/10/2014	225,000	$4,130,481	7/24/2014	300,000	$5,041,238
6/11/2014	334,100	$6,176,036	7/25/2014	200,000	$3,319,846
			Total	**26,975,023**	**$486,684,822**

327. The Sponsor Defendants deny the allegations contained in Paragraph 327, except refer the Court to trade records reflecting sales by funds affiliated with The Goldman Sachs Group, Inc.

> 328. Contemporaneously with Goldman Sachs Group's last sale in July 2014, on July 31, 2014, Plaintiff Universal purchased 2,092 shares of Cobalt common stock (*see* ECF No. 74-1 p. 8). On information and belief, thousands of other Class members also purchased shares contemporaneously with sales by Goldman Sachs Group from April 29, 2014 to July 25, 2014.

328. To the extent the allegations contained in Paragraph 328 state a legal conclusion, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 328, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning details of transactions by Class members.

> 329. On July 15, 2014, Defendant Bryant emailed the Board (by this point, Goldman Sachs Group no longer had a designee on the Board) concerning the fact that Goldman Sachs Group was flooding the market with shares: "It looks to us, based on the data that we have access to, that GS is liquidating their CIE position. Over the past few months, we believe that they have sold over 20 million shares. Last week, they may have been selling about 500K per day. At this point this is somewhat of an informed guess, but clearly someone wants out of the stock pretty bad right now . . .." Defendant Moore (First Reserve) responded that "I have calls in to Ken [Pontarelli] which he hasn't returned which is unusual."

329. To the extent that the allegations contained in Paragraph 329 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 329, except refer the Court to (i) the documents referenced in Paragraph 329 for an accurate statement of their contents, and (ii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations, and

admit and aver (on information and belief as to all Sponsor Defendants except The Goldman Sachs Group, Inc.) that on July 15, 2014 The Goldman Sachs Group, Inc. no longer had a designee on Cobalt's Board of Directors.

> 330. On August 5, 2014, Cobalt disclosed that the SEC's Enforcement Division had "recommend[ed] that the SEC institute an enforcement action against the Company, alleging violations of certain federal securities laws," and that it had received a Wells Notice from the SEC "related to the investigation [the SEC] has been conducting relating to Cobalt's operations in Angola, and the allegations of Angolan government official ownership of Nazaki." As a result, Cobalt's common stock price declined by more than 11% to close at $14.22 per share.

330. To the extent that the allegations contained in Paragraph 330 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 330, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the publicly reported market prices of Cobalt stock on the dates referenced in Paragraph 330, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

> 331. The truth about the Loengo well remained nonpublic and, almost immediately, Defendants Pontarelli and Lebovitz set about to sell Goldman Sachs Group's remaining shares.

331. The Sponsor Defendants deny the allegations contained in Paragraph 331.

> 332. Specifically, on or about August 25, 2014, Defendants Pontarelli and Lebovitz, along with a Goldman Sachs Group associate, prepared a memorandum "asking for approval from the [Goldman Sachs Group] investment committee to lower our selling threshold for Cobalt International Energy ("Cobalt") from $16.50 to $14.00 per share." The memorandum discussed Cobalt's recent announcement concerning the SEC Wells Notice, and stated that "the share price of Cobalt has fallen below our 10b5-1 program floor price threshold of $16.50 to ap-

> proximately $14.00-15.00 per share." Defendants Pontarelli and Lebovitz "recommend[ed] lowering our floor price threshold to $14.00 per share through a 10b5-1 program amendment and ***liquidating our remaining investment***" (emphasis in original). To be clear, at the time they made this recommendation, Defendants Pontarelli and Lebovitz knew what the public did not, that the Loengo well had limited commercial viability.

332. The Sponsor Defendants deny the allegations contained in Paragraph 332, except admit and aver (on information and belief as to all Sponsor Defendants except the one at issue in this Paragraph) that, on or about August 25, 2014, Kenneth Pontarelli, Scott Lebovitz and an associate at an affiliate of The Goldman Sachs Group, Inc. prepared a memorandum to the investment committee of the Merchant Banking Division of The Goldman Sachs Group, Inc. and refer the Court to (i) the memorandum for an accurate statement of its content, and (ii) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents.

> 333. The memorandum also revealed the remarkable profits realized by Goldman Sachs Group and its affiliates from Cobalt. Since Goldman Sachs Group had commenced selling shares in the February 2012 Common Stock Offering through its July 2014 sales, the company had sold 67 million shares for $1.538 billion, "representing 4.2x realized MOIC" (multiple on invested capital) to that point. In other words, as of July 2014, Goldman Sachs Group had already realized a 420% return on its Cobalt investment.

333. The Sponsor Defendants deny the allegations contained in Paragraph 333, except refer the Court to (i) the document referenced in Paragraph 333 for an accurate statement of its content, and (ii) Forms 4 filed with the SEC and trade records reflecting sales by funds affiliated with The Goldman Sachs Group, Inc.

> 334. The request by Defendants Pontarelli and Lebovitz to amend the 10b5-1 plan to lower the selling threshold evidently worked. On September 8, 2014, Goldman Sachs Group began selling shares again, this time in the $14.00-15.00 per share range, and sold shares on every trading day until September 30,

2014. At that point Goldman Sachs Group owned less than 1% of Cobalt. All told, in September 2014 alone, before the news about Loengo being a "dry hole" became public approximately one month later, Goldman Sachs Group sold 3,950,499 shares for another $57,870,727:

Trade Date	Shares	Proceeds
9/8/2014	370,000	$5,523,534
9/9/2014	300,000	$4,497,650
9/10/2014	425,000	$6,326,622
9/11/2014	400,000	$6,037,506
9/12/2014	200,000	$2,978,914
9/15/2014	250,000	$3,690,793
9/16/2014	200,000	$2,959,774
9/17/2014	200,000	$2,968,754
9/18/2014	275,000	$4,072,247
9/19/2014	200,000	$2,933,795
9/22/2014	125,000	$1,772,498
9/23/2014	200,000	$2,824,157
9/24/2014	200,000	$2,805,658
9/25/2014	134,999	$1,884,895
9/26/2014	180,000	$2,514,904
9/29/2014	270,500	$3,799,737
9/30/2014	20,000	$279,286
Total	**3,950,499**	**$57,870,727**

334. The Sponsor Defendants deny the allegations contained in Paragraph 334, except admit and aver (on information and belief as to all Sponsor Defendants except the one at issue in this Paragraph) that as of September 30, 2014 funds affiliated with The Goldman Sachs Group, Inc. owned less than 1% of Cobalt common stock and refer the Court to (i) trade records reflecting sales by funds affiliated with The Goldman Sachs Group, Inc., and (ii) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents.

> 335. On information and belief, members of the Class purchased shares of Cobalt common stock contemporaneously with each sale by Goldman Sachs Group from September 8, 2014 to September 30, 2014.

335. To the extent the allegations contained in Paragraph 335 state a legal conclusion, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning details of transactions by Class members.

> 336. On November 4, 2014, Cobalt finally revealed the truth about Loengo. At the beginning of trading that day, the Company announced that Loengo was "a dry hole" that had been "plugged and abandoned." Cobalt further disclosed a $55 million impairment charge related to Loengo. In other words, drilling the well to satisfy Sonangol had cost the Company $55 million. In response to the November 4, 2014 disclosures, the price of Cobalt's common securities declined by 11.5% from $11.38 per share at the close of trading on November 3, 2014, to $10.07 per share at the close of trading on November 4, 2014.

336. To the extent that the allegations contained in Paragraph 336 are not directed at the Sponsor Defendants, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 336, except refer the Court to (i) the Offering Documents and Cobalt's other public disclosures for an accurate statement of their contents, (ii) the publicly reported market prices of Cobalt stock on the dates referenced in Paragraph 336, and (iii) the Cobalt Defendants' Answer, which, on information and belief, sets forth the Cobalt Defendants' response to such allegations.

* * *

> 337. Section 20A of the Exchange Act provides that "[a]ny person who violates any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security while in possession of material nonpublic information shall be liable in an action . . . to any person who, contemporaneously with the

> purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class."

337. Because Paragraph 337 contains no factual allegations, no responsive pleading is required. To the extent that a response is required, the Sponsor Defendants refer the Court to the statute referenced in Paragraph 337 for an accurate statement of its content.

> 338. As set forth above, the Controlling Entity Defendants each committed underlying violations of Section 10(b) and Rule 10b-5 thereunder, by their acts and omissions as alleged in this Complaint. Specifically, the Controlling Entity Defendants violated Section 10(b) and Rule 10b-5 thereunder by selling Cobalt common stock while in possession of material nonpublic information on Nazaki's ownership, Cobalt's attendant exposure to regulatory and criminal actions, and Loengo's limited commercial viability. Consequently, the Controlling Entity Defendants are liable pursuant to Section 20A of the Exchange Act to any Plaintiff or other Class member who purchased common stock contemporaneously with the Controlling Entity Defendants' sales in the Common Stock Offerings or Goldman Sachs Group's 2014 secondary market sales.

338. To the extent the allegations contained in Paragraph 338 state a legal conclusion, no responsive pleading is required. To the extent a response is required, the Sponsor Defendants deny the allegations contained in Paragraph 338.

ANSWER TO PRAYER FOR RELIEF

The Sponsor Defendants deny that Plaintiffs are entitled to relief against the Sponsor Defendants, and the Sponsor Defendants request that the Court dismiss all claims against them with prejudice and order such further relief as the Court deems just and proper.

ANSWER TO JURY DEMAND

The Sponsor Defendants deny the allegations of Plaintiffs' demand for jury trial, except admit and aver on information and belief that Plaintiffs purport to demand a jury trial.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof, persuasion or production not otherwise legally assigned to them as to any element of Plaintiffs' claims,[9] the Sponsor Defendants hereby incorporate the First through Thirty-Third affirmative and other defenses stated in their Original Answer to Plaintiffs' Consolidated Amended Class Action, and assert the following additional affirmative and other defenses in relation to Count III of the Second Amended CAC:

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The claim asserted in the Second Amended CAC against the Sponsor Defendants under Section 20A of the Securities Exchange Act of 1934 ("Exchange Act") fails to state a claim upon which relief may be granted.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to sue under the Exchange Act or assert the Section 20A claim against any of the Sponsor Defendants.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

The Sponsor Defendants are entitled to recover contribution and/or indemnification from others for any liability they incur.

[9] In the Affirmative Defenses, the term "Plaintiffs" refers generally to the Lead Plaintiffs, named plaintiffs, and members of the class.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

The Sponsor Defendants are informed and believe, and on that basis allege, that Plaintiffs' Section 20A claim against the Sponsor Defendants is barred by the applicable statute of repose.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to any recovery under Section 20A because there was no underlying violation of Section 10(b) of the Exchange Act or Rule 10b–5 promulgated thereunder.

THIRTY-NINTH AFFIRMATIVE DEFENSE

Any injury allegedly sustained by Plaintiffs was not directly caused or proximately caused by any conduct or act of the Sponsor Defendants.

FORTIETH AFFIRMATIVE DEFENSE

Any damages shall be limited only to the Sponsor Defendants' profits gained or losses avoided in the transactions that are the subject of the alleged Section 20A claim.

FORTY-FIRST AFFIRMATIVE DEFENSE

To the extent that Section 20A permits a recovery of monetary damages by a Plaintiff who has not traded with any Sponsor Defendant and thus who has not suffered any redressable injury traceable to any unlawful conduct by the Sponsor Defendants, Section 20A is unconstitutional, in violation of the case or controversy requirement of Article III of the U.S. Constitution.

FORTY-SECOND AFFIRMATIVE DEFENSE

Any damage, loss, or liability sustained by Plaintiffs (which the Sponsor Defendants deny) must be reduced, diminished and/or barred to the extent Plaintiffs seek an overlapping or duplicative recovery pursuant to the various claims against the Sponsor Defendants or others.

FORTY-THIRD AFFIRMATIVE DEFENSE

The Sponsor Defendants adopt by reference any applicable defense pled by any other defendant not expressly set forth herein.

* * *

The Sponsor Defendants reserve the right to raise any additional defenses, cross-claims, and third-party claims, not asserted herein of which they may become aware through discovery or other investigation, as may be appropriate at a later time.

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July 17, 2017

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on the 17th day of July, 2017, a true and correct copy of the foregoing was forwarded to all known counsel of record via the Court's electronic notification system.

/S/ RONALD L. ORAN JR.
Ronald L. Oran Jr.